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Architectural Metal and Glass Workers Pension Trust Fund, et al.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, et al.,

Plaintiffs,

v.

CALVIN DONYELLE CRAIG, individually and
dba NU-GLASS SYSTEM,

Defendant.

Case No. C14-02087 EMC

**AMENDED JUDGMENT PURSUANT TO
STIPULATION;**

~~[PROPOSED]~~ ORDER THEREON

THIS SERVES TO AMEND the Judgment Pursuant to Stipulation (“Stipulation”) (Dkt. #13) entered on May 19, 2014, in favor of Plaintiffs Northern California Glaziers, Architectural Metal and Glass Workers Pension Trust Fund, et al. (collectively “Plaintiffs” or “Trust Funds”) and against Defendant Calvin Donyelle Craig, individually and *dba* Nu-Glass System (“Defendant”).

Defendant has requested that the Stipulation be amended to include additional amounts owed to Plaintiffs by Defendant and to extend the time period of the payment plan to allow for additional monthly payments toward the debt owed. This document shall, upon execution by all parties, supersede the previous Stipulation, and become the operative document between the parties.

IT IS HEREBY STIPULATED and AGREED (the “Amended Stipulation” or “Amended Judgment”) by and between the parties hereto, that a Amended Judgment shall be entered in the within

1 action in favor of Plaintiffs, and against Defendant, as follows:

2 1. Defendant is signatory to and bound by the terms of a Collective Bargaining
3 Agreement(s) (“Bargaining Agreement”) with the Plaintiff Union (“Union”). The Bargaining Agreement
4 is still in full force and effect.

5 2. Defendant specifically consents to the Court’s jurisdiction, and in accordance with the
6 provisions of 28 U.S.C. § 636(c), Defendant voluntarily consents to have a United States magistrate
7 judge conduct all further proceedings in this case, including entry of judgment herein.

8 3. Defendant further confirms that all successors in interest, assignees, and affiliated entities
9 (including, but not limited to, parent or other controlling companies), and any companies with which
10 Defendant joins or merges, if any, shall be bound by the terms of this Amended Stipulation as
11 Guarantors. This shall include Nu-Glass System, Inc., a California corporation, and any additional
12 entities in which Defendant is an officer, owner or possesses any controlling ownership interest. All
13 such entities shall specifically consent to the Court’s jurisdiction, the use of a Magistrate Judge for all
14 proceedings, and all other terms herein, in writing, at the time of any assignment, affiliation or purchase.

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4. Defendant is currently indebted to Plaintiffs as follows:

<u>ORIGINAL STIPULATION BALANCE</u>		
<i>Amount reflects all payments received to date and a partial waiver of liquidated damages.</i>		
20% Liquidated Damages on Late-Paid 6/14-7/14; 9/14-10/14; 6/15-10/15; 1/16; 4/16; 5/16; 7/16-11/16 Contributions:		\$37,338.95
<u>AUDIT (5/1/11-3/31/14)</u>		
Contribution Underpayments:	\$35,007.42	
20% Liquidated Damages:	\$7,001.48	
5% p/a Interest on Underpayments (through 3/6/17):	\$7,478.84	
Testing Fees:	\$7,007.50	
		\$56,495.24
<u>CURRENT CONTRIBUTIONS</u>		
1/18 Contributions:	\$28,583.97	
12/17 Contributions:	\$37,150.87	
20% Liquidated Damages on Late-Paid 12/16-11/17 Contributions and Unpaid 12/17-1/18 Contributions:	\$59,421.88	
5% p/a Interest on Late-Paid 12/16-11/17 Contributions and Unpaid 12/17-1/18 Contributions (through 3/6/18):	\$1,881.53	
Subtotal:		\$127,038.25
<u>ATTORNEYS' FEES AND COSTS</u>		
Attorneys' Fees (1/18/17-3/5/18):	\$14,762.00	
Costs (1/18/17-3/5/18):	\$37.11	
Subtotal:		\$14,799.11
AMENDED STIPULATION TOTAL:		\$235,671.55

Plaintiffs acknowledge receipt of a joint check issued by Overaa (numbered 200449 and dated February 28, 2018) in the amount of \$25,717.71 on March 6, 2018. Upon deposit and bank clearance, said check will be credited to the Amended Stipulation Total of \$235,671.55 set forth above.

REQUIREMENTS UNDER THE TERMS OF THIS AMENDED STIPULATION

5. Notice requirements pursuant to the terms of this Amended Stipulation are as follows:

- a) **Notices to Defendant:** Calvin D. Craig, Nu-Glass System, 1107 Enterprise Street, Stockton, CA 95204; email: nuglasssystem@gmail.com
- b) **Notices to Plaintiffs:** Michele R. Stafford, Saltzman & Johnson Law Corp., 44 Montgomery Street, #2110, San Francisco, CA 94104; email: mstafford@sjlawcorp.com, copy to compliance@sjlawcorp.com

6. The requirements pursuant to the terms of this Amended Stipulation are as follows:

- a) **Initial Payment; Monthly Payments:** Defendant shall make an initial payment followed by equal monthly payments toward the conditional amount of **\$169,248.19**, representing all of

1 the above amounts less conditionally waived liquidated damages in the amount of \$66,423.36.ⁱ

2 i) The initial payment in the amount of \$28,583.97 (equal to the
3 amount reported as owed for January 2018 contributions) shall be due on March 15, 2018. The payment
4 in the amount of \$25,717.71, referenced in ¶ 4 above may be applied to the initial Stipulated payment,
5 leaving a balance of \$2,866.26 remaining due on or before 3/15/18.

6 ii) Equal monthly payments in the amount of \$12,070.00 shall begin on
7 March 31, 2018 and shall be due on the last business day of each month for a period of **twelve (12)**
8 **months**.

9 iii) Plaintiffs may require that Defendant pay electronically, by wire transfer,
10 or by cashier's check.

11 iv) Defendant shall have the right to increase the monthly payments at any
12 time and there is no penalty for prepayment.

13 v) Payments shall be applied first to interest, at the rate of 5% per annum in
14 accordance with the Bargaining Agreement and Trust Agreements, then to principal. Interest shall begin
15 to accrue on March 7, 2018.

16 b) **Contributions:** Beginning with contributions due for hours worked by
17 Defendant's employees during the month of February 2018, and for every month thereafter until this
18 Amended Judgment is satisfied, Defendant shall remain current in reporting and payment of
19 contributions due to Plaintiffs under the terms of the Collective Bargaining Agreement(s).

20 c) **Job Report:** Beginning with the month of January 2018, and for every month
21 thereafter, Defendant shall fully disclose all jobs on which Defendant is working by providing Plaintiffs
22 with fully completed job reports on the form attached hereto as *Exhibit A*. Upon request by Plaintiffs,
23 Defendant shall also provide Plaintiffs with copies of Certified Payroll Reports.

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25 ⁱ This amount represents liquidated damages in the amount of \$7,001.48 (assessed on contribution
26 underpayments found due in the audit of Defendant's payroll records for the time period from 5/1/11-3/31/14)
27 plus the liquidated damages in the amount of \$59,421.88 (assessed on contributions that became
delinquent during the Stipulation (12/16-1/18), all totaling **\$66,423.36**.

28 Liquidated damages included in the original Stipulation balance in the total amount of **\$37,338.95**
(assessed on delinquent contributions for 6/14-7/14; 9/14-10/14; 6/15-10/15; 1/16; 4/16; 5/16; 7/16-
11/16) *shall not be waived*.

d) **Audit:** Pursuant to the requirements of the Bargaining Agreement and Trust Agreements, Defendant is required to submit to a further audit of its payroll records upon request by Plaintiffs.

i) In the event that amounts are found due to Plaintiffs as a result of the audit, Plaintiffs shall send a copy of the audit report, and written demand for payment to Defendant. In the event that the audit findings are not contested, payment in full shall be delivered to Michele R. Stafford at the address provided above.

ii) In the event that Defendant disputes the audit findings, Defendant must provide the dispute in writing, with all supporting documentation within ten (10) days of the date of the demand. Defendant shall be notified as to whether revisions will be made to the audit. If revisions are not made, payment will be immediately due. If revisions are made, payment in full of the revised amount shall be immediately due.

iii) If Defendant is unable to make payment in full, Defendant may submit a request to add the amounts found due on the audit to this Amended Stipulation. If the Amended Stipulation is so revised, Defendant shall execute the Amended Judgment or Amendment to Judgment within ten (10) days of receipt. Failure to execute the revised agreement shall constitute a default of the terms herein.

iv) Failure by Defendant to submit either payment in full or a request to add the amounts due to this Amended Judgment within ten days of receipt shall constitute a default of the obligations under this agreement. All amounts found due on audit shall then immediately become part of this Amended Judgment.

e) **Fees:** Defendant shall pay all additional attorneys' fees and costs incurred during the term of the Amended Stipulation through Satisfaction of Judgment, whether or not a default occurs.

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7. In summary, Defendant shall deliver the following payments and documents to Plaintiffs, at the following locations, on or before the following delivery deadlines, until this Amended Stipulation has been fully satisfied:

Required Submissions	Delivery deadlines ⁱⁱ	Delivery locations
Initial payment in the amount of \$28,583.97ⁱⁱⁱ (equal to the amount reported as owed for January 2018 contributions) payable to <i>District Council 16 Northern California Trust Funds</i>	3/15/2018	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
Stipulated payments in the amount of \$12,070.00 payable to <i>District Council 16 Northern California Trust Funds</i>	Last business day of each month (3/31/18-2/28/19)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104
Current contribution reports and payments (2/18-1/19) payable to <i>District Council 16 Northern California Trust Funds</i>	Last business day of each month (beginning 3/31/18, for 2/18 hours)	District Council 16 Northern California Trust Funds P.O Box 4816 Hayward, CA 94540-4816 <u>Plus copies to:</u> Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104 or compliance@sjlawcorp.com (subject: "Nu-Glass System")
Completed job reports (form attached as Exhibit A to Amended Stipulation) (1/18-1/19) and Certified Payroll Reports (if requested)	3/15/18 (for 1/18-2/18 hours); and Last business day of each month (beginning 3/31/18, for 3/18 hours)	Michele R. Stafford Saltzman & Johnson Law Corp. 44 Montgomery Street, #2110 San Francisco, CA 94104 or compliance@sjlawcorp.com (subject: "Nu-Glass System")

8. Failure to comply with any of the above terms, including submitting a payment that does not clear the bank, shall constitute a default of the obligations under this Amended Stipulation.

ⁱⁱ If the Amended Stipulation has not been fully satisfied by 2/28/19, all monthly submission requirements shall continue until all amounts have been paid and a Satisfaction of Judgment has been filed with the Court.

ⁱⁱⁱ The payment in the amount of \$25,717.71, referenced in ¶ 4 above may be applied to the initial Stipulated payment, leaving a balance of \$2,866.26 remaining due on or before 3/15/18.

DEFAULTS UNDER THE TERMS OF THIS AMENDED STIPULATION

9. If default occurs, Plaintiffs shall make a written demand to Defendant, to cure said default *within seven days of the date of the notice from Plaintiffs*. In the event default is not cured within the required time frame, all amounts remaining due hereunder (after application of principal payments made, if any) shall be due and payable on demand by Plaintiffs. These amounts shall include any conditionally waived liquidated damages, additional (“current”) contributions/liquidated damages/interest, and additional attorneys’ fees and costs incurred herein.

10. Any unpaid or late-paid contributions, together with 20% liquidated damages and 5% per annum interest, shall become part of this Amended Judgment. Plaintiffs reserve all rights available to collect any contributions and related amounts not included herein. This includes, but is not limited to, any amounts due pursuant to employee timecards or paystubs, by audit, or other means. Should Defendant fail to submit a report for any month, contributions shall be estimated pursuant to Trust Fund policy. Defendant specifically waives the defense of the doctrine *res judicata* as to any such additional amounts determined as due.

11. A Writ of Execution may be obtained without further notice, in the amount of the unpaid balance plus any additional amounts due under the terms herein. Such Writ of Execution may be obtained solely upon declaration by a duly authorized representative of Plaintiffs setting forth the balance due as of the date of default.

MISCELLANEOUS PROVISIONS

12. The above requirements remains in full force and effect regardless of whether or not Defendant has ongoing work, whether Defendant’s account with the Trust Funds is active, or whether Defendant is signatory to a Collective Bargaining Agreement with the Union. If, for any reason, Defendant has no work to report during a given month, Defendant shall submit the job report form (Exhibit A attached hereto) indicating that there are no current jobs. If Defendant has no contributions to report, Defendant shall submit the applicable contribution report stating “no employees.”

13. Payments made by joint check shall be endorsed on behalf of Defendant prior to submission, and may be applied toward Defendant’s monthly stipulated payment, provided that the issuer of the joint check is not requesting a release in exchange for the payment. Joint checks for which a

1 release is requested may not be applied toward Defendant's monthly stipulated payment, but shall be
2 deducted from the total balance owed under this Amended Stipulation, provided the payment is for
3 contributions included in this Amended Stipulation.

4 14. Prior to the last payment owed under this Amended Stipulation, Plaintiffs shall advise
5 Defendant as to the final amount due, including additional interest, any current contributions, liquidated
6 damages, and additional attorneys' fees and costs incurred, whether or not Defendant defaults herein.
7 Any additional amounts due shall be paid in full with the final stipulated payment due on February 28,
8 2019.

9 15. The conditional waiver of liquidated damages shall be presented to the Board of Trustees
10 for consideration only after all amounts due under the terms of this Amended Stipulation are paid in full,
11 and Defendant's account is otherwise current. If the waiver is granted, a Satisfaction of Judgment will be
12 filed with the Court once all payments have cleared the bank. If the waiver is not granted, the liquidated
13 damages will be immediately due. The waiver may be granted with further conditions, such as paying
14 timely and remaining current for an additional period of time.

15 16. Defendant waives any notice of Entry of Judgment or of any Request for a Writ of
16 Execution, and expressly waives all rights to stay of execution and appeal.

17 17. Any failure on the part of Plaintiffs to take any action as provided herein in the event of
18 any breach of the provisions of this Amended Stipulation shall not be deemed a waiver of any
19 subsequent breach.

20 18. In the event that Defendant files for bankruptcy protection, Defendant specifically agrees
21 that the amounts due hereunder, which are employee benefits and related sums, shall not be
22 dischargeable. Defendant agrees to reaffirm this debt, and will not request that the debt be discharged.

23 19. Should any provisions of this Amended Stipulation be declared or determined by any
24 court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
25 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said illegal,
26 unenforceable or invalid part, term, or provisions shall be deemed not to be part of this Amended
27 Stipulation.

28 20. This Amended Stipulation is limited to the agreement between the parties with respect to

1 the unpaid and delinquent contributions and related sums enumerated herein, owed by Defendant to
2 Plaintiffs. This Amended Stipulation does not in any manner relate to withdrawal liability claims, if any.
3 Defendant acknowledges that Plaintiffs expressly reserve their right to pursue withdrawal liability
4 claims, if any, against Defendant and all of its control group members, as provided by Plaintiffs' Plan
5 documents, Trust Agreements incorporated into their Bargaining Agreements, and applicable laws and
6 regulations.

7 21. This Amended Stipulation contains all of the terms agreed to by the parties and no other
8 agreements have been made. Any changes to this Amended Stipulation shall be effective only if made in
9 writing and signed by all parties hereto.

10 22. This Amended Stipulation may be executed in any number of counterparts and by
11 facsimile, each of which shall be deemed an original and all of which shall constitute the same
12 instrument.

13 23. Defendant represents and warrants that he has had the opportunity to be or have been
14 represented by counsel of his own choosing in connection with entering this Amended Stipulation under
15 the terms and conditions set forth herein, that he has read this Stipulation with care and is fully aware of
16 and represents that he enters into this Stipulation voluntarily and without duress.

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24. The parties agree that the Court shall retain jurisdiction of this matter until this Amended Judgment is satisfied.

Dated: March 20, 2018

CALVIN DONYELLE CRAIG

By: /S/
Calvin Donyelle Craig, an individual

Dated: March 20, 2018

NU-GLASS SYSTEM

By: /S/
Calvin Donyelle Craig, Sole Proprietor

Dated: March 20, 2018

NU-GLASS SYSTEM, INC., a California corporation, as Guarantor

By: /S/
Calvin Donyelle Craig
RMO/CEO/President

Dated: March 21, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.,**

By: /S/
Jose Santana:
Trustee of Plaintiff Trust Funds

Dated: March 26, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.**

By: /S/
John G. Maggiore
Trustee of Plaintiff Trust Funds

Dated: March 26, 2018

**SALTZMAN & JOHNSON LAW
CORPORATION**

By: /S/
Matthew P. Minser
Attorneys for Plaintiffs, District Council 16
Nor. Cal. Health and Welfare Trust Fund, et al.

IS SO ORDERED. IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

Dated: March ____, 2018

UNITED STATES DISTRICT JUDGE

Exhibit A: JOB REPORT FORM**Completed Forms Due by the Last Business Day of each month**by email to compliance@sjlawcorp.com (subject line: *Nu-Glass System*), or
delivered to Saltzman & Johnson, 44 Montgomery St., Ste. 2110, San Francisco, CA 94104**Employer: Nu-Glass System****Report for the month of _____, 20__ Submitted by: _____**

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

Project Name:		Public or Private? (Circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Phone #:	Project Manager Name:	
Project Manager Phone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

*****Attach additional sheets as necessary*****

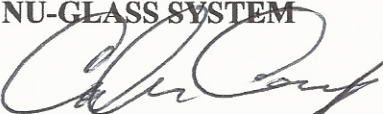
24. The parties agree that the Court shall retain jurisdiction of this matter until this Amended Judgment is satisfied.

Dated: March 20, 2018

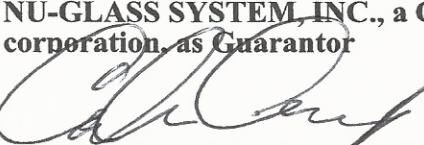
By: CALVIN DONYELLE CRAIG

Calvin Donyelle Craig, an individual

Dated: March 20, 2018

By: NU-GLASS SYSTEM

Calvin Donyelle Craig, Sole Proprietor

Dated: March 20, 2018

By: NU-GLASS SYSTEM, INC., a California corporation, as Guarantor

Calvin Donyelle Craig
RMO/CEO/President

Dated: March __, 2018

By: BAY AREA PAINTERS AND TAPERS PENSION TRUST FUND, ET AL.

Jose Santana
Trustee of Plaintiff Trust Funds

Dated: March __, 2018

By: NORTHERN CALIFORNIA GLAZIERS, ARCHITECTURAL METAL AND GLASS WORKERS PENSION TRUST FUND, ET AL.

John G. Maggiore
Trustee of Plaintiff Trust Funds

Dated: March __, 2018

By: SALTZMAN & JOHNSON LAW CORPORATION

Matthew P. Minser
Attorneys for Plaintiffs, District Council 16
Nor. Cal. Health and Welfare Trust Fund, et al.

IS SO ORDERED. IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

Dated: March __, 2018

UNITED STATES DISTRICT JUDGE

24. The parties agree that the Court shall retain jurisdiction of this matter until this Amended Judgment is satisfied.

Dated: March __, 2018

CALVIN DONYELLE CRAIG

By: _____

Calvin Donyelle Craig, an individual

Dated: March __, 2018

NU-GLASS SYSTEM

By: _____

Calvin Donyelle Craig, Sole Proprietor

Dated: March __, 2018

NU-GLASS SYSTEM, INC., a California corporation, as Guarantor

By: _____

Calvin Donyelle Craig
RMO/CEO/President

Dated: March __, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.,**

By: _____

Print Name:
Trustee of Plaintiff Trust Funds

Dated: March 26, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.**

By: _____


John G. Maggiore
Trustee of Plaintiff Trust Funds

**SALTZMAN & JOHNSON LAW
CORPORATION**

Dated: March __, 2018

By: _____

Matthew P. Minser
Attorneys for Plaintiffs, District Council 16
Nor. Cal. Health and Welfare Trust Fund, et al.

IS SO ORDERED. IT IS FURTHER ORDERED that the Court shall retain jurisdiction over this matter.

Dated: March __, 2018

UNITED STATES DISTRICT JUDGE

24. The parties agree that the Court shall retain jurisdiction of this matter until this Amended Judgment is satisfied.

Dated: March , 2018

CALVIN DONYELLE CRAIG

By:

Calvin Donvelle Craig, an individual

Dated: March , 2018

NU-GLASS SYSTEM

By:

Calvin Donvelle Craig, Sole Proprietor

Dated: March __, 2018

NU-GLASS SYSTEM, INC., a California corporation, as Guarantor

By:

Calvin Donyelle Craig
RMO/CEO/President

Dated: March 21, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.,**

By:


Print Name: Jose Santana
Trustee of Plaintiff Trust Funds

Dated: March __, 2018

**NORTHERN CALIFORNIA GLAZIERS,
ARCHITECTURAL METAL AND GLASS
WORKERS PENSION TRUST FUND, ET AL.**

By:

John G. Maggiore
Trustee of Plaintiff Trust Funds

Dated: March __, 2018

**SALTZMAN & JOHNSON LAW
CORPORATION**

By:

Matthew P. Minser
Attorneys for Plaintiffs, District Council 16
Nor. Cal. Health and Welfare Trust Fund, et al.

IS SO ORDERED. IT IS FURTHER ORDERED that the Court shall

Dated: March 27, 2018

UNITED STATES DISTRICT COURT

